



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



Hong Don Lee  
200 Nottingham Square Road  
Epping, NH 03042

Re: 229 Mill Pond Road, Nottingham, NH

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 02-010**

**March 21, 2002**

**I. Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Hong Don Lee, pursuant to RSA 147-A and RSA 149-M and Env-C 612. The Division is proposing that fines totaling \$6,100 be imposed against Hong Don Lee for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. Parties**

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.

2. Hong Don Lee is an individual having a mailing address of 200 Nottingham Square Road, Epping, NH 03042.

**III. Summary of Facts and Law Supporting Claims**

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.

2. Pursuant to RSA 147-A:17-a, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to RSA 149-M:16, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 149-M or rules adopted pursuant thereto. Pursuant to these sections, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.

3. Hong Don Lee is the owner of land at 229 Mill Pond Road, Nottingham, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 3440, Page 810, and identified on Nottingham Tax Maps as map 0024, Lot 0139 ("Site").

4. On August 7, 2001, DES received a complaint alleging that hazardous waste and solid waste were being mismanaged at the Site.

5. On August 23, 2001, DES staff investigated the complaint by conducting an inspection of the Site ("Inspection"). The purpose of the Inspection was to determine Hong Don Lee's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules.

6. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste with the hazardous waste number of NH01.

7. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."

8. RSA 147-A:2, IV defines "[hazardous waste] facility" as "a location at which hazardous waste is subjected to treatment, storage or disposal and may include a facility where hazardous waste is generated."

9. During the Inspection, DES staff observed the following in the garage at the Site

- a. A metal container labeled "Liquid Rubber Cleaner- Combustible", with contents;
- b. An open one-quart container labeled "Gear Oil", with contents;
- c. A full one-gallon metal container labeled "Thread Cutting Oil";
- d. An open 20-gallon drum with contents labeled "IH Gas Lubricant",
- e. A sealed, unlabeled 20-gallon container with contents;
- f. One open, unlabeled five-gallon container, approximately half full with a dark liquid;
- g. One unsealed, green 55-gallon metal drum with contents labeled "Airthane PET95A Polyurethane Intermediate";
- h. One black 55-gallon metal drum with used oil filters on top of the drum, labeled "Trispropanolamine 99";
- i. An open three-gallon container half full with a dark liquid;
- j. An unlabeled blue 55-gallon plastic drum, sealed, with contents;
- k. Three 55-gallon drums with contents, one of which was not sealed;
- l. An unlabeled 35-gallon drum, sealed, with contents;
- m. Two sealed, unlabeled 55-gallon drums with contents;
- n. Two sealed, unlabeled 20-gallon drums with contents;
- o. A full one-gallon plastic container labeled "Muriatic Acid";

- p. An open five-gallon plastic container half full with a green liquid;
- q. Two one-gallon metal paint cans with contents, labeled "Primer Synthetic Enamel"; and
- r. A one-gallon metal paint can with contents, labeled "Fast Low VOC Urethane".

10. During the Inspection, DES staff observed a partially full 275-gallon fuel oil tank in the basement of the house at the Site.

11. During the Inspection, DES staff observed several unlabeled 300- and 500-gallon fuel tanks. Some of the tanks had contents and one of the tanks was not sealed.

12. On August 28, 2001, DES staff met with John Terninko and David Lee, friends of Hong Don Lee, at the Site. Mr. Terninko and Mr. Lee informed DES staff that they have been assisting Hong Don Lee in matters pertaining to the Site.

13. Mr. Terninko and Mr. Lee informed DES staff that they believed that most of the containers in the garage contained used oil.

14. Mr. Terninko informed DES staff that Hong Don Lee had once rented the garage to an auto repair business.

15. Hong Don Lee is a generator of hazardous waste as defined by RSA 147-A:2, VI.

16. The Site is a hazardous waste facility as defined by RSA 147-A:2, IV.

17. Env-Wm 502.01 requires that all generators of waste shall determine if that waste is a hazardous waste as set forth in Env-Wm 401.01.

18. Several of the containers identified in C.9 have unknown contents.

19. During the Inspection, DES staff observed a trailer with yellow, green, and orange stripes along the sides at the Site. Inside the trailer, DES staff observed a full one-gallon container labeled "Refrigerant Oil" and a full one-gallon metal container labeled "Water Base White Pigment KILZ II".

20. As of the date of this Notice of Proposed Administrative Fine, Hong Don Lee has not determined if the contents of the containers observed by DES staff during the Inspection are hazardous.

21. Env-Wm 513.02(a) requires that hazardous waste generators "...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."

22. During the Inspection, DES staff observed several areas of stained soil at the Site.

23. The stained soil observed by DES staff represents a potential discharge of hazardous waste that requires the responsible party to clean up the discharge. Hong Don Lee did not conduct a hazardous waste determination on the stained soil.
24. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle" at all times during accumulation and storage.
25. During the Inspection, DES staff observed several unlabeled containers of used oil at the Site.
26. Env-Wm 807.06(b)(5) requires used oil generators to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container.
27. During the Inspection, DES staff observed several containers of used oil at the Site which were not closed and sealed.
28. RSA 149-M:4, XXII defines "solid waste" in part, as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
29. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product .... which is composed of wholly or partly of such materials as .... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
30. During the Inspection, DES staff observed several automobile batteries in the garage at the Site.
31. During the Inspection, DES staff observed two automobile batteries and one unlabeled pressurized cylinder in the basement of the house at the Site.
32. During the Inspection, DES staff observed a bag of calcium sulfate in the house at the Site.
33. During the Inspection, DES staff observed the following at the Site:
  - a. Approximately 100 tires over an embankment. Some tires were in the Little River Creek;
  - b. Several unlabeled empty 300- and 500-gallon tanks; and
  - c. Empty 55-gallon drums, restaurant equipment, screens, windows, empty five-gallon containers, carpet, "Black Beauty" sandblast grit, clothing, empty propane cylinders, metal, and blocks scattered around the Site.

34. During the Inspection, DES staff observed the following in the trailer identified in C.19: an automobile battery; plastic trash containers, various sized plastic containers, papers, and magazines.
35. The tires, batteries, empty containers, calcium sulfate, "Black Beauty" sandblast grit pressurized cylinders, carpet, clothing, metal, windows, and screens observed by DES at the Site are solid waste as defined by RSA 149-M:4, XXII.
36. RSA 149-M:9, II states that " It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility."
37. A review of DES files shows that the Site is not approved to accept solid waste.
38. As a result of the August 28, 2001, meeting with Mr. Terninko and Mr. Lee, DES staff issued a Report of Initial Complaint Investigation ("RICI") to Mr. Terninko on behalf of Hong Don Lee advising him to label and seal all used oil containers; label and seal all containers of hazardous waste; containerize released material into appropriate, compatible containers; notify DES as a generator of hazardous waste, and remove all solid and hazardous waste to a permitted facility. Mr. Terninko signed the RICI on behalf of Hong Don Lee.
39. On August 30, 2001, Mr. Terninko informed DES staff via e-mail that he had properly disposed of the automobile batteries at the Town of Nottingham Transfer Station and that he would forward the disposal receipt to DES.
40. On September 6, 2001, Mr. Terninko informed DES staff via e-mail that he had labeled several of the containers of used oil with the words "Used Oil for Recycling."
41. On October 3, 2001, DES staff conducted a follow-up inspection of the Site and found that one 55-gallon drum in the garage had been labeled "Used Oil for Recycle" and the automobile batteries had been removed from the Site. No other violations were corrected.
42. On November 1, 2001, DES staff conducted a follow-up inspection of the Site. DES staff observed no change to the Site.
43. On November 28, 2001, DES staff conducted a follow-up inspection of the Site. DES staff observed the following:
  - a. Two drums were now sealed and labeled "Used Oil for Recycle";
  - b. At least ten unlabeled containers of various sizes with contents, two of which were not sealed, remained in the garage;
  - c. An unlabeled, unsealed five-gallon bucket with contents which appeared to contain transmission fluid;
  - d. An unlabeled, unsealed three-gallon container with contents which appeared to contain used oil;

- e. Approximately one dozen tires had been moved part way up the embankment; and
- f. Little or no change to the rest of the Site.

44. On December 18, 2001, DES staff conducted a follow-up inspection of the Site. DES staff observed the following:

- a. Several of the drums which were in the garage were no longer present;
- b. Approximately 80-90 tires had been moved to the top the embankment however some tires remained below; and
- c. Little or no change had occurred to the rest of the Site.

45. On January 2, 2002, DES staff conducted a follow-up inspection of the Site and observed no change to the Site.

#### **IV. Violations Alleged and Proposed Administrative Fines**

1. Hong Don Lee has violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle." For this violation, Env-C 612.10(a)(1) specifies a fine of \$100 for each container that is 55-gallons or greater and not labeled. Env-Wm 612.10(a)(2) specifies a fine of \$50 per container that is 55-gallons or less and not labeled. For the violation noted above, the Division is seeking a total fine of \$300.
2. Hong Don Lee has violated Env-Wm 807.06(b)(5) by failing to seal all containers of used oil destined for recycle. For this violation, Env-C 612.10(b)(1) specifies a fine of \$100 for each container that is 55-gallons or greater and not sealed. Env-Wm 612.10(b)(2) specifies a fine of \$50 per container that is 55-gallons or less and not sealed. For the violation noted above, the Division is seeking a total fine of \$300.
3. Hong Don Lee has violated Env-Wm 502.01 by failing to conduct a hazardous waste determination on containers and tanks with unknown contents as well as the stained soil. For this violation, above, Env-C 612.05(a) specifies a fine of \$1,500 per determination not made. For the violation noted above, the Division is seeking a total fine of \$1,500.
4. Hong Don Lee has violated Env-Wm 513.02(a) by failing to remediate a discharge of hazardous waste. For this violation, Env-C 612.09(d) specifies a fine of \$2,000 per calendar week or portion thereof the measures were not implemented. For the violation noted above, the Division is seeking a total fine of \$2,000.
5. Hong Don Lee has violated RSA 149-M:9, II by disposing of solid waste at an unpermitted solid waste facility. For this violation, above, Env-C 612.11(b) specifies a fine of \$2,000 per 20 cubic yards or portion thereof disposed. For the violation noted above, the Division is seeking a total fine of \$2,000.

The total fine being sought is \$6,100.

### V. Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than April 22, 2002 using the enclosed colored form.

1. If Mr. Lee would like to have a hearing, please sign the appearance section of the colored form and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If Mr. Lee chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If Mr. Lee wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine and call Mr. Ballentine to indicate Mr. Lee's interest in settling.

Mr. Lee is not required to be represented by an attorney. If Mr. Lee chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

### VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Mr. Lee committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Mr. Lee committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- \* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Mr. Lee proves, by a preponderance of the evidence, applies** in this case:
  - 1 The violation was a one-time or non-continuing violation, **and** Mr. Lee did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Mr. Lee did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, Mr. Lee was making a good faith effort to comply with the requirement that was violated.
3. Mr. Lee has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Mr. Lee's case which was not known to the Division at the time the fine was proposed.


**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Mr. Lee committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Mr. Lee's opportunity to present testimony and evidence that Mr. Lee did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Mr. Lee has any evidence, such as photographs, business records or other documents, that Mr. Lee believes show that he did not commit the violation(s) or that otherwise support Mr. Lee's position, Mr. Lee should bring the evidence to the hearing. Mr. Lee may also bring witnesses (other people) to the hearing to testify on Mr. Lee's behalf.

**If Mr. Lee wishes to have an informal meeting to discuss the issues, Mr. Lee must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

  
**COPY**  
Philip J O'Brien, Ph.D., Director  
Waste Management Division

Enclosure (NHDES Fact Sheet CO-2 2000)

cc: Gretchen Rule, Legal Unit Coordinator  
Susan Alexant, DES Hearings and Rules Attorney  
Mark Harbaugh, DES Enforcement Attorney  
Tammy Calligandes, DES/WMD/SIS